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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,604	09/26/2005	Hans-Christian Swoboda	10191/3959	9654
26646 7590 12/08/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
OLSEN, LIN B				
ART UNIT		PAPER NUMBER		
3661				
MAIL DATE		DELIVERY MODE		
12/08/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/520,604

**Applicant(s)**

SWOBODA ET AL.

**Examiner**

LIN B. OLSEN

**Art Unit**

3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9, 10, 12-19 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9, 10, 12-19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is in response to the filing on November 13, 2009 of response to the Office Action of September 9, 2009. The application current contains 14 claims with claims 9 and 14 being independent.

### ***Response to Arguments***

Applicant's arguments, see Page 5 filed 11/13/2009 with respect to rejection under 35 USC 112 2<sup>nd</sup> paragraph have been fully considered and are persuasive. The rejection of claims 9 and 14 under 35 USC 112 2<sup>nd</sup> paragraph has been withdrawn.

Applicant's arguments, see Pages 5-6, filed 11/13/2009 with respect to the rejection(s) of claim(s) 9, 10, 12-19 and 21-24 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Labuhn and U.S. Patent No. 5,400,864 to Winner et al.

The Examiner notes that in conjunction with disqualifying U.S. Patent Pub. No. 2002/0177935 as prior art, the assertion was made that a certified translation of German Patent Application No 10231687.2 was enclosed. The translation was not included with the prior filing.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 9, 10, 12-19, 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labuhn et al. (US 6,009,368) (Winner) in view of U.S. Patent. No. 5,400,864 to Winner et al. (Winner). Labuhn is concerned with an adaptive cruise control that uses deceleration control to prevent a vehicle from violating a desired minimum distance from a preceding vehicle. Winner is concerned with controlling the speed of a vehicle and its spacing from a preceding vehicle.

With respect to **claim 9**, Labuhn discloses a method for notifying a driver of a motor vehicle equipped with an adaptive distance and speed controller, comprising: one of activating or deactivating a prompt which informs the driver that the vehicle is coming critically close to a target object (FIG. 4 and Column 8, lines 31-32, 36-43 and 52-53);

wherein the activation or deactivation of the prompt occurs (FIG. 4 and Column 8, lines 66-67 and Column 9, lines 1-2) as a function of at least one of:

i) a fixed minimum distance between a distance-controlled and speed- controlled vehicle and the target object (FIG. 4, block 411, where XM is the minimum inter-vehicle spacing as described in Column 7, line 23)

ii) a relative speed-dependent minimum distance of the distance-controlled and speed- controlled vehicle in relation to the target object (FIG. 4, block 411, where VR'TB is the relative speed-dependent minimum distance as described in Column 3, lines 54-56), and

iii) a maximum vehicle deceleration producible by the distance and speed controller (FIG. 4, block 423 where DMAX is represents a deceleration limit as described in Column 9, lines 53-62)

Labuhn's alert is not called a takeover alert; however, it does notify the driver when the vehicle gets critically close to the target object, it therefore serves the same purpose as applicant's takeover prompt.

"and wherein the takeover prompt is further output when the driver overrides the distance and speed controller by depressing an accelerator. –Labuhn does not discuss the alert's mechanism in detail nor the alert's action when the driver overrides the controller by accelerating, but Winner, which teaches a vehicle with an Adaptive Cruise Control (ACC) System addresses this. This system allows the driver to override the system either by engaging the directional signal or by accelerating. As stated at col. 8 lines 65 to col. 9 line 3:

"In addition, provision may be made that while the distance control may be interrupted as described in connection with Fig. 3, at an intentional acceleration of the vehicle by the driver, a reduction of the safety distance may be indicated by a visual or audible alarm, so that if he so desires the driver may abandon the process of acceleration."

Thus if the operator depresses the accelerator causing the vehicle to make a dangerous approach to an obstacle, the collision alarm will be emitted. It would have been obvious to one of ordinary skill in the art at the time of the invention to use Winner's prior art elements of notifying the driver in Labuhn's system to yield the predictable result that the driver is notified of the impending dangerous approach to an obstacle regardless of how that condition came about and can take evasive action.

With respect to **claim 10**, Labuhn discloses the prompt is at least one of: a visual display in a field of view of the driver, and an acoustic signal in an interior of the vehicle (Column 3, lines 63-65, Column 4, lines 2-7). See paragraph 2a above. Labuhn does not explicitly disclose the display is in a field of view of the driver and an acoustic signal is in an interior of the vehicle. However, it is well known that the vehicle instrument cluster or other display panel is in the field of view of the driver and/or audible alerting apparatus for operator is an acoustic signal in an interior of the vehicle as the operator is inside of the vehicle while operating the vehicle (Column 3, lines 63-64, Column 4, lines 5-7).

With respect to **claim 12**, Labuhn discloses activation thresholds and deactivation thresholds of the prompt are not identical (FIG. 4, Column 8, lines 18-31). See paragraph 2a above.

With respect to **claim 13**, Labuhn discloses the distance and speed controller emits and receives radar signals, with the aid of which preceding vehicles can be recognized as target objects (Column 1, lines 27-29, Column 3, lines 50-57).

With respect to **claim 14**, Labuhn discloses a device for the distance and speed control of a motor vehicle (Column 2, lines 62-64 and Column 3, lines 10-12, 50-54), comprising:

an arrangement which outputs a prompt, informing a driver that the vehicle is coming critically close to a target object (FIG. 4 and Column 8, lines 31-32, 36-43 and 52-53), the arrangement being configured so that activation and deactivation of the takeover prompt occurs (FIG. 4 and Column 8, lines 66-67 and Column 9, lines 1-2) as a function at least one of:

i) a fixed minimum distance between the distance- and speed-controlled vehicle and the target object (FIG. 4, block 411, where XM is the minimum inter-vehicle spacing as described in Column 7, line 23),

ii) a relative speed-dependent minimum distance between the distance- and speed- controlled vehicle and the target object (FIG. 4, block 411, where VR'TB is the relative speed-dependent minimum distance as described in Column 3, lines 54-56), and

iii) a maximum vehicle deceleration producible by the distance and speed controller (FIG. 4, block 423 where DMAX is represents a deceleration limit as described in Column 9, lines 53-62). See paragraph 2a above.

wherein the takeover prompt is further output when the driver overrides the distance and speed controller by depressing an accelerator. – (Winner, states that the system emits a collision alarm in any case if the system ascertains a dangerous approach to an obstacle (Col. 8 line 65 to col. 9 line 3)

With respect to **claim 15**, Labuhn discloses a display device, the display device displaying the prompt in a field of view of the driver (Column 3, lines 63-65, Column 4,

lines 2-7). See paragraph 2a above. Labuhn does not explicitly disclose the display device is in a field of view of the driver. However, it is well known that the vehicle instrument cluster or other display panel visual and/or audible alerting apparatus for operator interfacing provides visual display in a field of view of the driver as the operator is inside of the vehicle while operating the vehicle (Column 3, lines 63-64, Column 4, lines 5-7).

With respect to **claim 16**, Labuhn discloses an acoustic device, the prompt being output as an acoustic signal by the acoustic device in an interior of the vehicle (Column 3, lines 63-65, Column 4, lines 2-7). See paragraph 2a above. Labuhn does not explicitly disclose the acoustic device is in an interior of the vehicle. However, it is well known that the vehicle instrument cluster or other display panel visual and/or audible alerting apparatus for operator interfacing provides an acoustic signal in an interior of the vehicle as the operator is inside of the vehicle while operating the vehicle (Column 3, lines 63-64, Column 4, lines 5-7).

With respect to **claim 17**, Labuhn discloses a radar device, the radar device configured to emit and receive radar signals so that a preceding vehicle can be recognized as a target object (Column 1, lines 27-29, Column 3, lines 50-57).

With respect to **claim 18**, Labuhn discloses a display device, the display device displaying the takeover prompt in a field of view of the driver; and an acoustic device,



the takeover prompt being output as an acoustic signal by the acoustic device in an interior of the vehicle (See rejections of claims 15 and 16, above).

With respect to **claim 19**, Labuhn discloses a radar device, the radar device configured to emit and receive radar signals so that a preceding vehicle can be recognized as a target object (See rejection of claim 17, above).

With respect to **claim 21**, Labuhn discloses activation thresholds and deactivation thresholds of the prompt are not identical (See rejection of claim 12, above).

With respect to **claim 22**, Labuhn discloses the distance and speed controller emits and receives radar signals, with the aid of which preceding vehicles can be recognized as target objects (See rejection of claim 13, above).

With respect to **claim 23**, Labuhn discloses at least one of a display device, the display device displaying the prompt in a field of view of the driver, (Column 3, lines 63-65, Column 4, lines 2-7). (See discussion at claim 15 above) and , Labuhn discloses an acoustic device, the prompt being output as an acoustic signal by the acoustic device in an interior of the vehicle; (Column 3, lines 63-65, Column 4, lines 2-7). See discussion at claim 16 above) and

Labuhn discloses a radar device, the radar device configured to emit and receive radar signals so that a preceding vehicle can be recognized as a target object; (Column 1, lines 27-29, Column 3, lines 50-57) (See discussion at claim 17 above).

Labuhn discloses activation thresholds and deactivation thresholds of the prompt are not identical (See rejection of claim 21, above). and

Labuhn discloses the distance and speed controller emits and receives radar signals, with the aid of which preceding vehicles can be recognized as target objects (See rejection of claim 22, above).

With respect to **claim 24**, Labuhn discloses the prompt is at least one of: a visual display in a field of view of the driver, and an acoustic signal in an interior of the vehicle (Column 3, lines 63-65, Column 4, lines 2-7) (See discussion at claim 10 above) and Labuhn discloses activation thresholds and deactivation thresholds of the prompt are not identical (FIG. 4, Column 8, lines 18-31) (See discussion at claim 12 above) and Labuhn discloses the distance and speed controller emits and receives radar signals, with the aid of which preceding vehicles can be recognized as target objects (Column 1, lines 27-29, Column 3, lines 50-57) (See discussion at claim 12 above).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIN B. OLSEN whose telephone number is (571)272-9754. The examiner can normally be reached on Mon - Fri, 8:30 -5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on 571-272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lin B Olsen/  
Examiner, Art Unit 3661

/Thomas G. Black/  
Supervisory Patent Examiner, Art Unit 3661